

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

INTERNATIONAL ASSOCIATION OF
HEAT AND FROST INSULATORS AND
ASBESTOS WORKERS, AFL-CIO (HFIA),
LOCAL UNION NO. 50

and

Case 09-CB-239346

ALLOYD INSULATION CO., INC.

and

Case 25-CB-239416

ADVANCED ENERGY PROTECTION, LLC

and

Case 09-CB-240443

PEDERSEN INSULATION CO.

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

I. Introduction:

On September 10, 2019, the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO (HFIA), Local Union No. 50 (Respondent) filed its motion moving for summary judgment. Counsel for the General Counsel respectfully opposes Respondent's motion for the reasons stated below. In short, Respondent's motion - by itself - perfectly illustrates why a hearing in this matter is necessary.

II. The Complaint:

On August 16, 2019, the instant Complaint and Notice of Hearing (complaint) issued in the present matter alleging that Respondent violated Section 8(b)(1)(B) of the Act by threatening to no longer permit Alloyd Insulation Co., Inc. (Alloyd) employee David Hines (Hines), Advanced Energy Protection, LLC (Advanced) employee James Petrides (Petrides), and Pederson Insulation Co. (Pederson) employee Jim Perrault (Perrault) to collect their pension while working for their respective employers under a Special Participation Agreement. The

complaint specifically alleges that Hines, Petrides, and Perrault all performed collective-bargaining and grievance handling functions for their respective employers. ^{1/} Respondent has denied those allegations.

The formal documents alone demonstrate the meritless nature of Respondent's motion. The General Counsel will present evidence at the unfair labor practice hearing to substantiate the allegations made in the complaint, and while Respondent may appreciate the opportunity to learn of that evidence prior to the hearing, it well knows that the Board's processes do not include pre-trial discovery. The undersigned is not required to apprise Respondent, through an opposition to its baseless motion, with the evidence General Counsel will present at the forthcoming hearing. ^{2/} Thus, this Board should see Respondent's motion for what it is - nothing more than an attempt by Respondent to engage in pre-trial discovery.

III. Respondent's Motion Should be Denied:

Respondent's motion for summary judgment should be denied. Rather than present this Board with a motion highlighting the absence of disputed facts, Respondent's motion does the opposite: it draws attention to disputed facts that must be heard at an administrative hearing before an Administrative Law Judge. It is well settled that in ruling on a motion to dismiss, "the Board construes the complaint in a light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers*, 330 NLRB 524 at fn. 7 (2000). In order to support a motion for summary judgment, Respondent must show an absence of genuine issues of material fact. *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB 1143 (2006).

^{1/} The complaint also alleges that Alloyd employee Darrell Gleadell was swept up in Respondent's unlawful conduct directed towards Hines, Petrides, and Perrault. Respondent denied that allegation.

^{2/} The administrative hearing is currently set for October 15, 2019.

Respondent has not shown an absence of genuine issues of material fact. Instead, it has highlighted the centrally disputed facts that must be presented at an administrative hearing. For example, Respondent claims that Hines did not perform any collective-bargaining related duties for Alloyd, then conveniently drops a footnote to admit that he was present for at least one collective-bargaining negotiating session. Likewise, Respondent admits that Perrault was a member of Pedersen's negotiation team in contract negotiations with Respondent. Whether Hines' and Perrault's presence at their respective negotiation sessions rise to the level of collective-bargaining related duties in the context of Section 8(b)(1)(B) clearly should be left to an Administrative Law Judge to decide following the presentation of evidence, not disposed of through a summary judgment motion.

IV. Conclusion:

The complaint raises factual and legal disputes necessitating a hearing on the merits absent settlement by the parties. Respondent's motion only serves to further highlight those factual disagreements. Consequently, summary judgment is unwarranted, and the undersigned respectfully urges the Board to summarily deny Respondent's motion.

Dated: September 24, 2019

Respectfully submitted,

/s/ Daniel A. Goode

Daniel A. Goode
Counsel for the General Counsel
Region 9, National Labor Relations Board
John Weld Peck Federal Building, Room 3003
550 Main Street
Cincinnati, Ohio 45202-3271

CERTIFICATE OF SERVICE

September 24, 2019

I hereby certify that I served Counsel for the General Counsel's Opposition to Respondent's Motion for Summary Judgment on this date on the following parties by electronic mail.

Marilyn L. Widman, Esq.
Kera L. Paoff, Esq.
Widman & Franklin, LLC
405 Madison Avenue, Suite 1550
Toledo, OH 43604
Email: marilyn@wflawfirm.com
Email: kera@wflawfirm.com

Robert T. Dunlevey, Jr, Esq.
Nadia A. Lampton, Esq.
Taft Stettinius & Hollister
40 N Main St, Suite 1700
Dayton, OH 45423-1029
Email: rdunlevey@taftlaw.com
Email: nlampton@taftlaw.com

Respectfully submitted,

/s/ Daniel A. Goode

Daniel A. Goode
Counsel for the General Counsel
Region 9, National Labor Relations Board
John Weld Peck Federal Building, Room 3003
550 Main Street
Cincinnati, Ohio 45202-3271